

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.305 of 1998.

Wednesday, this the 20th day of December, 2000.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K. Gopalakrishnan,
Junior Accountant,
P.A.II Section, Office of the
Deputy Director, Accounts,
(Postal) G.P.O. Complex,
Trivandrum.

Applicant

(By Advocate Shri Thomas Mathew)

Vs.

1. Union of India represented by
its Secretary, Department of Posts,
New Delhi.
2. Chief Postmaster General,
Kerala Circle,
Trivandrum.
3. Deputy Director, Accounts
(Postal) GPO Complex,
Trivandrum.
4. Senior Accounts Officer (P.A),
Office of the Deputy Director of
Accounts, Trivandrum.
5. K.A. Madhavan Pillai,
Deputy Director of Accounts,
(Postal) GPO Complex,
Trivandrum.

Respondents

(By Advocate Shri R. Prasanthkumar, ACGSC (R.1-4))

The application having been heard on 20.12.2000, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The challenge in this O.A. is against the orders dated 17.2.98(A8) and 18.2.98 (A8-(2)) by which the period from 27.11.97 to 12.12.97 (Sixteen days) has been treated as 'Dies Non' in the case of the applicant. This period was treated as 'Dies Non' as per impugned order purportedly under Rule 62 of P&T Manual Vol.III.

2. It is alleged in the application that the impugned orders have been issued by the 4th respondent at the instance of the 3rd respondent who has been personally impleaded as 5th respondent and who is having ill feeling towards the applicant on account of certain allegations made by the applicant in the representation against the order by which the applicant was transferred. It is further alleged in the application that the applicant had neither absented from the office nor left the office nor has refused to perform the duties assigned to him. The failure to complete the compilation work according to the applicant was owing to non-tallying of certain bills and lack of assistance from other staff. It has also been stated by the applicant that the relevant details were received late and therefore, he could not complete the compilation on time. In reply to the show cause notice prior to issue of A8 order, the applicant had given a representation in which he had stated all these facts. However, the impugned order has been passed, according to the applicant without application of mind and therefore, he seeks to have the orders quashed.

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3. The respondents in their reply statement have sought to justify their action on the ground that the applicant refused to take the assistance of other staff and did not complete the compilation work assigned to him on time and therefore, the impugned orders have been validly issued as per the provisions of Rule 62 of P&T Manual Vol.III.

4. We have perused the pleadings and materials placed on record and have heard the learned counsel on either side. Rule 62 of the P&T Manual Vol. III is extracted below:

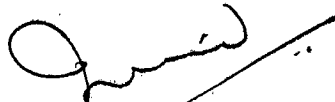
When a day can be marked dies non and its effect.-- Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as dies non, i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices.'

5. A mere reading of this provision would make it clear that only if an official absents from duty without proper permission or when on duty in office left the office without permission or while in the office, refused to perform the duties assigned to him, it would be subversive of discipline, and then the days on which work is not performed can be treated as 'dies non'. In this case on a scrutiny of the entire materials placed on record we do not find that the applicant has either absented from office, left the office

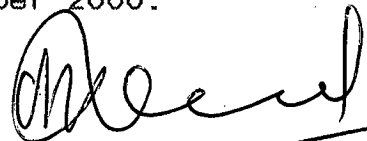
without proper permission or refused to perform the duties assigned to him. Even going by the averments in the reply statement, the applicant has only failed to complete the compilation work which means the applicant could not, within the time stipulated, complete the work assigned to him. Even if his failure to complete the work is assumed to be on account of inability of the applicant that does not justify treating the period as dies non. In this case the applicant has, in the representation made in response to the show cause notice stated that he was not given any assistance, that the relevant details were received very late and that the Bills did not tally and that therefore he could not complete the compilation work. In the impugned order it has not been stated that the applicant was given assistance or that the relevant details were available or that the applicant refused to do work. Therefore we find that there was no justification for the respondents to treat the days as dies non in the case of the applicant as the circumstances for treating the period as dies non as enunciated in Rule 62 of P&T Manual Vol.III did not exist.

6. In the light of what is stated above, finding that the impugned order is unsustainable, we set aside the impugned orders A8 and A8(2) with all consequential benefits. No costs.

Dated the 20th December 2000.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-8: True copy of Memo No.484/PA-II/K.Gopalakrishnan dated 17.2.98 along with corrigendum issued by the 4th respondent.
2. A-8(2): True copy of the corrigendum No.485/PA-II/K.Gopalakrishnan dated 18.2.98 issued by the 4th respondent.